

**THE THREE HUNDRED THIRTY-NINTH OMNIBUS OBJECTION TO CLAIMS SEEKS TO REDUCE OR RECLASSIFY, AND ALLOW AS GENERAL UNSECURED CLAIMS CERTAIN FILED PROOFS OF CLAIM. PARTIES RECEIVING THIS NOTICE OF THE THREE HUNDRED THIRTY-NINTH OMNIBUS OBJECTION TO CLAIMS SHOULD REVIEW THE OMNIBUS OBJECTION TO SEE IF THEIR NAME(S) AND/OR CLAIM(S) ARE LOCATED IN THE OMNIBUS OBJECTION AND/OR THE EXHIBITS ATTACHED THERETO TO DETERMINE WHETHER THE OBJECTION AFFECTS THEIR CLAIM(S).**

**IF YOU HAVE QUESTIONS, PLEASE CONTACT  
 LEHMAN BROTHERS HOLDINGS INC.'S  
 COUNSEL, KYLE J. ORTIZ, AT (212)-310-8392.**

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 Robert J. Lemons

Attorneys for Lehman Brothers Holdings Inc.  
 and Certain of its Affiliates

**UNITED STATES BANKRUPTCY COURT  
 SOUTHERN DISTRICT OF NEW YORK**

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<b>In re</b>	<b>: Chapter 11 Case No.</b>
	<b>:</b>
<b>LEHMAN BROTHERS HOLDINGS INC., et al.,</b>	<b>: 08-13555 (JMP)</b>
	<b>:</b>
<b>Debtors.</b>	<b>: (Jointly Administered)</b>
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**NOTICE OF HEARING ON THREE HUNDRED THIRTY-NINTH OMNIBUS  
 OBJECTION TO CLAIMS (REDUCE OR RECLASSIFY, AND ALLOW)**

**PLEASE TAKE NOTICE** that on August 14, 2012, Lehman Brothers Holdings Inc. (“LBHI” and the “Plan Administrator”), as Plan Administrator under the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors for certain entities in the above-referenced chapter 11 cases, filed its three hundred thirty-ninth

omnibus objection to claims (the “Three Hundred Thirty-Ninth Omnibus Objection to Claims”), and that a hearing to consider the Three Hundred Thirty-Ninth Omnibus Objection to Claims will be held before the Honorable James M. Peck, United States Bankruptcy Judge, in Courtroom 601 of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004, on **September 27, 2012 at 10:00 a.m. (Prevailing Eastern Time)**, or as soon thereafter as counsel may be heard.

**PLEASE TAKE FURTHER NOTICE** that any responses to the Three Hundred Thirty-Ninth Omnibus Objection to Claims must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court (a) electronically in accordance with General Order M-399 (which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)) by registered users of the Bankruptcy Court’s filing system, and (b) by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with General Order M-182 (which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)), and served in accordance with General Order M-399, and on (i) the chambers of the Honorable James M. Peck, One Bowling Green, New York, New York 10004, Courtroom 601; (ii) attorneys for LBHI, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Robert J. Lemons, Esq. and Mark Bernstein, Esq.); and (iii) the Office of the United States Trustee for Region 2, 33 Whitehall Street, 21st Floor, New York, New York 10004 (Attn: Tracy Hope Davis, Esq., Elisabetta Gasparini, Esq., and Andrea B. Schwartz, Esq.); so as to be so filed and received by no later than **September 13, 2012 at 4:00 p.m. (Prevailing Eastern Time)** (the “Response Deadline”).

**PLEASE TAKE FURTHER NOTICE** that if no responses are timely filed and served with respect to the Three Hundred Thirty-Ninth Omnibus Objection to Claims or any claim set forth thereon, the Plan Administrator may, on or after the Response Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Three Hundred Thirty-Ninth Omnibus Objection to Claims, which order may be entered with no further notice or opportunity to be heard offered to any party.

Dated: August 14, 2012  
New York, New York

/s/ Robert J. Lemons  
Robert J. Lemons

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re : Chapter 11 Case No.  
:   
LEHMAN BROTHERS HOLDINGS INC., *et al.*, : 08-13555 (JMP)  
:   
Debtors. : (Jointly Administered)  
-----X

**THREE HUNDRED THIRTY-NINTH OMNIBUS OBJECTION  
TO CLAIMS (REDUCE OR RECLASSIFY, AND ALLOW)**

**THIS THREE HUNDRED THIRTY-NINTH OMNIBUS OBJECTION TO CLAIMS  
SEEKS TO REDUCE OR RECLASSIFY, AND ALLOW AS GENERAL UNSECURED  
CLAIMS CERTAIN FILED PROOFS OF CLAIM. PARTIES RECEIVING THIS  
THREE HUNDRED THIRTY-NINTH OMNIBUS OBJECTION TO CLAIMS SHOULD  
REVIEW THE OMNIBUS OBJECTION TO SEE IF THEIR NAME(S) AND/OR  
CLAIM(S) ARE LOCATED IN THE OMNIBUS OBJECTION AND/OR THE EXHIBITS  
ATTACHED THERETO TO DETERMINE WHETHER THIS OBJECTION AFFECTS  
THEIR CLAIM(S).**

**IF YOU HAVE QUESTIONS, PLEASE CONTACT  
LEHMAN BROTHERS HOLDINGS INC.'S  
COUNSEL, KYLE J. ORTIZ, AT (212)-310-8392.**

TO THE HONORABLE JAMES M. PECK  
UNITED STATES BANKRUPTCY JUDGE:

Lehman Brothers Holdings Inc. (“LBHI” and the “Plan Administrator”), as Plan Administrator under the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors (the “Plan”) for the entities in the above-referenced chapter 11 cases (the “Chapter 11 Estates”), respectfully represents as follows:

**Relief Requested**

1. LBHI files this three hundred thirty-ninth omnibus objection to claims (the “Three Hundred Thirty-Ninth Omnibus Objection to Claims”), pursuant to section 502(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 3007(d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and this Court’s order approving procedures for the filing of omnibus objections to proofs of claim filed in these chapter 11 cases (the “Procedures Order”) [ECF No. 6664], seeking to reduce or reclassify, and allow as unsecured claims certain portions of the claims listed on Exhibit A annexed hereto.

2. The Plan Administrator has examined the proofs of claim identified on Exhibit A (the “Claims”) and has determined (i) that the portions of the Claims should be reduced and allowed as unsecured claims because the Claims were filed in an unliquidated or partially unliquidated amount or the amounts listed on the proofs of claim are greater than the fair, accurate, and reasonable values of the amounts for which the Chapter 11 Estates are liable; and (ii) that portions of the Claims asserted as priority claims should be reclassified as general unsecured claims and allowed because the claims do not meet the criteria required for entitlement to priority status. The Plan Administrator, therefore, requests that the Court reduce or reclassify, and allow as general unsecured claims each Claim listed on Exhibit A in the amounts and priorities set forth in the row entitled “*Claim as Modified.*”

### **Jurisdiction**

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

### **Background**

4. Commencing on September 15, 2008 (the “Commencement Date”) and periodically thereafter, LBHI and certain of its subsidiaries commenced with this Court voluntary cases under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b).

5. On January 14, 2010, the Court entered the Procedures Order, which authorizes the filing of omnibus objections to no more than 500 claims at a time, on various grounds, including those set forth in Bankruptcy Rule 3007(d) and those additional grounds set forth in the Procedures Order.

6. On December 6, 2011, the Court entered an order confirming the Plan [ECF No. 23023]. The Plan became effective on March 6, 2012.

7. Pursuant to the Plan, the Plan Administrator is authorized to interpose and prosecute objections to claims filed against the Chapter 11 Estates.

### **The Claims**

8. The Claims listed on Exhibit A annexed hereto assert claims based on the following:

- Claims for services rendered to LBHI by various outside contractors (the “Outside Contractors”) asserted by the Outside Contractors as 507(a)(4) priority claims (the “Misclassified Claims”);
- A claim held by an LBHI vendor, Merritt & Harris (“M&H”), for services allegedly performed (the “M&H Claim”);

- A claim arising from a swap transaction and debt service guarantee (the “Berlin Claim”) held by Berlin-Hannoversche Hypothekenbank Aktiengesellschaft (“Berlin”);
- A partially unliquidated and contingent claim filed by the United States Department of Health and Human Services (“HHS”) for debts under the Medicare Secondary Payer Act (the “HHS Claim”).

**The Claims Should Be Reduced  
or Reclassified, and Allowed as General Unsecured Claims**

9. A filed proof of claim is “deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). If an objection to a proof of claim is filed, the allowed amount of such claim must be determined “as of the date of the filing of the petition.” 11 U.S.C. § 502(b). If an objection refuting at least one of the claim’s essential allegations is asserted, the claimant has the burden to demonstrate the validity of the claim. *See In re Oneida Ltd.*, 400 B.R. 384, 389 (Bankr. S.D.N.Y. 2009); *In re Adelphia Commc’ns Corp.*, Ch. 11 Case No. 02-41729 (REG), 2007 Bankr. LEXIS 660 at \*15 (Bankr. S.D.N.Y. Feb. 20, 2007); *In re Rockefeller Ctr. Props.*, 272 B.R. 524, 539 (Bankr. S.D.N.Y. 2000). Section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim shall not be allowed to the extent that “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law.” 11 U.S.C. § 502(b)(1).

**I. The Misclassified Claims Are Not Entitled to Section 507(a)(4) Priority**

10. The Misclassified Claims were filed by Outside Contractors of LBHI. The Misclassified Claims assert priority claims for commissions, fees, or wages pursuant to section 507(a)(4)(b) of the Bankruptcy Code. Section 507(a)(4)(b), however, only provides priority for “sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor’s business if, and only if, during the 12 months preceding that date, at least 75 percent

of the amount that the individual or corporation earned . . . was earned from the debtor.” 11 U.S.C. § 507(a)(4)(b). Although the Misclassified Claims are for services rendered to LBHI, none of the Outside Contractors meet the criteria for a priority claim set forth in Section 507(a)(4)(b) of the Bankruptcy Code because the Misclassified Claims are not for sales commissions earned by an individual or a corporation with only 1 employee, and/or LBHI did not account for at least 75 percent of the Outside Contractors’ earnings.

11. Accordingly, to preserve the Bankruptcy Code’s intended order of priority and to prevent improper recovery, the Plan Administrator requests entry of the Proposed Order, reclassifying the Misclassified Claims in the amount and priority listed on Exhibit A in the row entitled “*Claim as Modified*” and allowing the Misclassified Claims to the extent of such modified amount and priority.

## **II. The M&H Claim Should Be Reduced and Allowed**

12. The M&H Claim should be reduced and allowed. After a review of the relevant documentation, M&H’s supporting documentation, and LBHI’s books and records, the Plan Administrator has determined that LBHI is not liable for certain of the services for which a portion of the M&H Claim is based because such services were preformed pursuant to a contract between LBHI and a non-debtor third party. Thus, the M&H Claim does not reflect the proper value of the M&H Claim. The amount listed on Exhibit A in the row entitled “*Claim as Modified*” represents the accurate value of the M&H Claim. Accordingly, in order to properly reflect the accurate value of the M&H Claim it should be reduced to the amount listed on Exhibit A in the row entitled “*Claim as Modified*” and allowed to the extent of such modified amount.



**III. The Berlin Claim Should Be Reduced and Allowed**

13. The Berlin Claim should be reduced and allowed. The Berlin Claim was filed as an unliquidated claim. Pursuant to a termination and release agreement dated June 14, 2012, LBHI and Berlin agreed to liquidate the Berlin Claim in the fixed amount of \$1,494,634.20 as a general unsecured claim. Accordingly, in order to properly reflect the accurate value of the Berlin Claim it should be reduced to the amount listed on Exhibit A in the row entitled "*Claim as Modified*" and allowed to the extent of such modified amount.

**IV. The HHS Claim Should Be Reduced and Allowed**

14. The HHS Claim should be reduced and allowed. The HHS Claim was asserted in an amount of \$8,208.75, plus a contingent unliquidated amount. LBHI now wishes to (i) allow the HHS claim in the asserted amount of \$8,208.75 as a general unsecured claim, and (ii) disallow any portion asserted for contingent unliquidated amounts. Accordingly, in order to properly reflect the accurate value of the HHS Claim it should be allowed in the amount listed on Exhibit A in the row entitled "*Claim as Modified*."

**Reservation of Rights**

15. The Plan Administrator reserves all rights to object on any basis to any Claim or any portion of any Claim as to which the relief requested herein is not granted.

**Notice**

16. No trustee has been appointed in these Chapter 11 Cases. Notice of this objection has been provided to (i) the United States Trustee for Region 2; (ii) the Securities and Exchange Commission; (iii) the Internal Revenue Service; (iv) the United States Attorney for the Southern District of New York; (v) each claimant listed on Exhibit A; and (vi) all other parties entitled to notice in accordance with the procedures set forth in the second amended order entered on June 17, 2010, governing case management and administrative procedures for these

cases [ECF No. 9635]. The Plan Administrator submits that no other or further notice need be provided.

17. No previous request for the relief sought herein has been made by the Plan Administrator or the Chapter 11 Estates to this or any other Court.

WHEREFORE the Plan Administrator respectfully requests entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: August 14, 2012  
New York, New York

/s/ Robert J. Lemons  
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and Certain of Its Affiliates

**EXHIBIT A**

## IN RE LEHMAN BROTHERS HOLDINGS INC., ET AL., CASE NO: 08-13555 (JMP)

## OMNIBUS OBJECTION 339: EXHIBIT A - PROOFS OF CLAIM TO BE REDUCED AND ALLOWED

			ASSERTED			MODIFIED		
	NAME	CLAIM #	FILED DATE	DEBTOR	CLASS	AMOUNT	DEBTOR	CLASS AMOUNT
1	ANDERSON, ANDRE 95 KENWOOD ROAD GARDEN CITY, NY 11530	3520	03/26/2009	Lehman Brothers Holdings Inc.	Priority	\$2,850.00	Lehman Brothers Holdings Inc.	Unsecured \$2,850.00
2	BERLIN- HANNOVERSCHE HYPOTHEKENBANK AKTIENGESELLSCHAFT ATTN: RONALD NAHRMANN (RISIKOBETREUUNG IMMOBILIEN) BUDAPESTER STRASSE 1 BERLIN, 10787 GERMANY	14868	09/17/2009	Lehman Brothers Holdings Inc.	Unsecured	\$2,989,268.39*	Lehman Brothers Holdings Inc.	Unsecured \$1,494,634.20
3	MERRITT & HARRIS INC. 90 JOHN STREET NEW YORK, NY 10038	18223	09/18/2009	Lehman Brothers Holdings Inc.	Unsecured	\$35,876.66	Lehman Brothers Holdings Inc.	Unsecured \$20,026.66
4	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES DANNA DRORI, AUSA 86 CHAMBERS STREET, 3RD FLOOR NEW YORK, NY 10007	3336	03/12/2009	Lehman Brothers Holdings Inc.	Unsecured	\$8,208.75*	Lehman Brothers Holdings Inc.	Unsecured \$8,208.75
5	WEINGARTEN WEATHER CONSULTING 502 L ESPRIT PKWY PENDLETON, KY 40055- 7745	6433	07/27/2009	Lehman Brothers Commodity Services Inc.	Priority	\$1,200.00	Lehman Brothers Commodity Services Inc.	Unsecured \$1,200.00
6	ZIELINSKI, JIMMY 23 LINDEN AVENUE BELLEVILLE, NJ 07109	7442	08/05/2009	Lehman Brothers Holdings Inc.	Priority	\$3,000.00	Lehman Brothers Holdings Inc.	Unsecured \$3,000.00
TOTAL						\$3,040,403.80	TOTAL	\$1,529,919.61

\* - Indicates claim contains unliquidated and/or undetermined amounts

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
**In re** : **Chapter 11 Case No.**  
 :  
**LEHMAN BROTHERS HOLDINGS INC., et al.,** : **08-13555 (JMP)**  
 :  
**Debtors.** : **(Jointly Administered)**  
-----X

**ORDER GRANTING THREE  
HUNDRED THIRTY-NINTH OMNIBUS OBJECTION  
TO CLAIMS (REDUCE OR RECLASSIFY, AND ALLOW)**

Upon the three hundred thirty-ninth omnibus objection to claims, dated August 14, 2012 (the “Three Hundred Thirty-Ninth Omnibus Objection to Claims”),<sup>1</sup> of Lehman Brothers Holdings Inc. (“LBHI”), as Plan Administrator under the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors, pursuant to section 502(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 3007(d) of the Federal Rules of Bankruptcy Procedure, and this Court’s order approving procedures for the filing of omnibus objections to proofs of claim [ECF No. 6664], seeking to (i) reduce and allow the Claims on the basis that the amounts and/or priorities listed on the proofs of claim are greater than the fair, accurate, and reasonable values and/or priorities determined by the Plan Administrator after a review of the claimants’ supporting documentation and the Chapter 11 Estates’ books and records, as more fully described in the Three Hundred Thirty-Ninth Omnibus Objection to Claims; and due and proper notice of the Three Hundred Thirty-Ninth Omnibus Objection to Claims having been provided, and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief requested in the Three Hundred Thirty-Ninth Omnibus Objection to Claims is in the best interests of the Chapter 11

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Three Hundred Thirty-Ninth Omnibus Objection to Claims.

Estates, their creditors, and all parties in interest, and that the legal and factual bases set forth in the Three Hundred Thirty-Ninth Omnibus Objection to Claims establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the relief requested in the Three Hundred Thirty-Ninth Omnibus Objection to Claims is granted to the extent provided herein; and it is further

ORDERED that (i) each Claim listed on Exhibit 1 annexed hereto is reduced and allowed in the amount and priority set forth on Exhibit 1 in the row entitled “*Claim as Modified*” and in the columns entitled “*Priority*,” and “*Unsecured*” and (ii) any asserted amounts in excess of the reduced amount are disallowed; and it is further

ORDERED that this Order has no res judicata, estoppel, or other effect on the validity, allowance, or disallowance of, and all rights to object and defend on any basis are expressly reserved with respect to any claim or portion of any claim listed on Exhibit A to the Three Hundred Thirty-Ninth Omnibus Objection to Claims that does not appear on Exhibit 1 annexed hereto; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: \_\_\_\_\_, 2012  
New York, New York

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UNITED STATES BANKRUPTCY JUDGE